From the facts there is no doubt that the carrying of the hand-grenade and the ammunition formed part of the same transaction as that of the first appellant carrying a rifle, and therefore the evidence relating to the hand-grenade and ammunition was rightly admitted under section 6 of the Evidence Enactment (Cap. 10). As to this particular point, reference should be made to the judgment of this Court in the case of *Jaafar bin Hussain v. Public Prosecutor*[1].

For these reasons we dismissed the appeals of both appellants.

Appeals dismissed.

BEH CHAI ENG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Thomson, J.) May 20, 1950]

[Perak — Criminal Appeal No. 14 of 1950]

Penal Code, s. 193 — False evidence — Statements made during the course of investigation — Criminal Procedure Code, Chapter XIII — Form of the charge.

The appellant in this case was charged with and convicted for giving false evidence in the course of a police investigation conducted under Chapter XIII of the Criminal Procedure Code. The facts of the case were as follows:— On the 2nd October, 1949, a shophouse at Segari was burned in circumstances which led to the commencement the same day of a police investigation under Chapter XIII of the Criminal Procedure Code in relation to a charge of committing mischief by fire on the part of one Hoo Lieng Ping. The following day, and in the course of this investigation, the appellant was interviewed by the Officer-in-Charge of the Police Station of Segari and made a statement to him in the Malay language, to the effect that he had seen Hoo Lieng Ping pouring kerosene oil on the walls of the burnt shop and attempting to burn it. On 18th October, the appellant, in circumstances which are not very clear, made a further statement to the Officer-in-Charge of the Sitiawan Police District. This statement was made in a Chinese dialect and interpreted into English, and in the course of it he said that on the occasion of the fire he heard people saying that Hoo Lieng Ping had tried to set fire to this shop but, "I never actually saw him throw kerosene on the house". The charge against the appellant set out the material portions of the two statements made by him and went on, "one of which statements you either knew or believed to be false or did not believe to be true, and thereby committed an offence punishable under section 193 of the Penal Code." At the trial the prosecution produced evidence that the appellant had made both the statements in question, but they did not produce any evidence to show which of them was true and which of them was false. They were content to take up the position that the two statements were in such flat and direct contradiction to each other that one of them must necessarily, to the knowledge of the appellant, be false. In his defence the appellant stated that he had not told the Officer-in-Charge of the Segari Police Station that he had seen Hoo Lieng Ping pour kerosene oil on the walls of the house and that that officer was mistaken as to what he had said. The learned President accepted that the appellant had made the two statements he was alleged to have made and without coming to any conclusion as to which of them was true and which of them was false found that one or other of them must be false to the knowledge of the appellant. He accordingly convicted the appellant.

Held, that before an accused person can be held guilty under section 193 of the Penal Code, it is necessary to show by the evidence that the statement which is set out in the charge was a statement in answer to questions put by the investigating officer to the accused.

Cases referred to:—

(1) *The Empress v. Baikanta Bauri* I.L.R. 16 Cal. 349 at p. 354.

(2) *Queen-Empress v. Bhagwantia* I.L.R. 15 All. 11 at p. 13.

CRIMINAL APPEAL from the Sessions Court at Sitiawan.

S. M. Sharma for the appellant.

E. N. Griffith-Jones for the respondent.

Cur. Adv. Vult.

Thomson, J. : — After giving the facts as stated in the Head-notes, his Lordship proceeded. The grounds of appeal are :—

(1) That the charge against the appellant was defective in that it did not give sufficient information as to the offence alleged to have been committed by him;

(2) That by reason of section 113 of the Criminal Procedure Code the statements made by the appellant should not have been admitted in evidence;

(3) That the learned President was wrong in coming to the conclusion that the appellant was able to speak the Malay language in the form in which his statement to the Officer-in-Charge of the Segari Police Station was recorded.

The first two grounds of appeal are without substance. The charge follows the form set out in Form XXVII(11)4 contained in the Second Schedule to the Criminal Procedure Code, and the two statements made to the Police Officers were clearly admissible by reason of sub-section (iv) of section 113 of the Criminal Procedure Code which reads as follows :—

"(iv) when any person is charged with any offence in relation to the making or contents of any statement made by him to a police officer in the course of a police investigation under this Chapter such statement may be used as evidence in such prosecution."

As regards the third ground of appeal, it was submitted by Counsel, and it is confirmed by the senior Malay Interpreter attached to the Court, that the first statement made by the appellant as recorded and produced in evidence is couched in extremely elegant and correct Malay of a sort that was unlikely to issue

from the lips of a Chinese shopkeeper in a place like Segari. It is, moreover, significant in this connection that when the second statement was taken from the appellant he was allowed to speak in his own language and what he said was translated into English by a Chinese interpreter. Nevertheless, I do not think that there is room for doubt that although the words of the first statement as written down may not have been the exact words which issued from the lips of the appellant, they accurately represent the substance of what he said and intended to say, and on this ground of appeal alone I would not have been prepared to interfere with the conviction.

The conviction, however, to my mind is open to objection on grounds other than those raised by the appellant.

Intentionally giving false evidence is an offence punishable under section 193 of the Penal Code and by section 191 of that Code it is laid down that

"Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence."

In the present case on both occasions when the appellant gave evidence he did not do so on oath in a judicial proceeding but he did so in the course of a police investigation under Chapter XIII of the Criminal Procedure Code. In the circumstances the only express provision of law which required him to state the truth was that contained in section 112 of the Code. That section provides that a Police officer making a police investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case and goes on to say:—

"Such person shall be bound to answer truly all questions relating to such case put to him by such officer".

That section, it is to be noted, does not require a person interviewed by the Police in the course of a police investigation to make a statement the whole of which is true. It only compels him to give truthful answers to such questions as may be put to him.

In the present case the Prosecution have failed to prove that either of the statements contained in the charge were uttered by the appellant in reply to questions put to him. There is no evidence that any questions at all were put to him and though perhaps it might reasonably be inferred from the ordinary practice of the Police that some questions were put, there is no evidence whatsoever as to what these questions wese or, in particular, as to whether the specific statements complained of were made in answer to questions. That being so, there was no evidence to shew that in making these statements the appellant was bound to state the truth and therefore he should not have been convicted.

I am confirmed in the conclusion at which I have thus arrived by certain Indian cases which, though they may not be binding on me, are of considerable value in the interpretation of a portion of our law which has been imported from India. The law here relating to false evidence is the same as that contained in the Indian Penal Code, and section 112 of our Criminal Procedure Code is exactly the same as section 161 of the Indian Criminal Procedure Code of 1882 although it differs from corresponding section of the existing Indian Code which omits the word 'truly' from the portion I have already quoted. In 1889 the question with which I am here concerned came before the Calcutta Courts in the case of *The Empress v. Baikanta Bauri*[1] a case in which the circumstances bore a very remarkable resemblance to the present one. Mitter and Macpherson, JJ. referred to section 161 of the Code (that is the 1882 Code) and proceeded to make the following observations:—

"The second paragraph of that section declares that a person examined by a police officer under the provisions of it 'shall be bound to answer truly all questions relating to such case put to him by such officer.' Before an accused person can be held guilty under section 193 (of the Penal Code), it is, therefore, necessary that it should be shown by the evidence that the statement which is set out in the charge was a statement in answer to questions put by the investigating police officer to the accused. That this statement was made in answer to any question put by the investigating police officer is not established by any evidence . . . . . The statement . . . was made by the accused to the head constable . . . Upon the establishment of this fact alone, without any proof that the statement was in answer to questions put by the head constable, we are of opinion that the accused cannot be convicted of giving false evidence under section 193 even if that statement be proved to be false."

The same view was expressed in 1892 in the Allahabad case of *Queen-Empress v. Bhagwantia*[2] where it was said by Edge, C.J., and Tyrrell, J.:—

"The test as to whether a case comes within paragraph 2 of section 161 of the Code of Criminal Procedure, 1882, is — was a question put to the person by the police officer, and was what was stated by that person stated in answer to that question?"

The appeal is allowed and the conviction quashed.

Appeal allowed.

FOONG KOOI v. WONG CHING (F).

[App. Civ. Juris. (Hill, J.) May 18, 1950]
[Ipoh — Civil Appeal No. 6 of 1950]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 12 — Right of appeal — Control of Rent (Amendment) Ordinance, 1949, s. 11.